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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/780,691	02/19/2004	Michael Travis Gilbert	003797.00766	2033

28319 7590 02/09/2007  
BANNER & WITCOFF LTD.,  
ATTORNEYS FOR CLIENT NOS. 003797 & 013797  
1001 G STREET, N.W.  
SUITE 1100  
WASHINGTON, DC 20001-4597

EXAMINER
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FREJD, RUSSELL WARREN

ART UNIT	PAPER NUMBER
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2128

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/09/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/780,691	GILBERT ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Russell Frejd	2128	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 21 November 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

In re Application of: Gilbert et al.

***Examination of Application #10/780,691***

1. This communication is in response to the amendment received 21-November-2006. Claims 1-21 are pending in the application. This application is a CIP of 10/716,701, filed on 20-November-2003, now USP 7,077,749.

***Claim Rejections under 35 U.S.C. § 101***

2. 35 U.S.C. 101 reads as follows:  
Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter or any new and useful improvement thereof, may obtain a patent therefore, subject to the conditions and requirements of this title.
  - 2.1 Claims 1-21 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.
  - 2.2 In regard to claims 11-20, the invention claims (claim 11 preamble), *"A data structure stored on a **tangible** (newly amended) computer readable medium, said data structure identifying weather for simulation in a computer game"*.
    - 2.2.1 This claimed subject matter lacks a practical application of a judicial exception (law of nature, abstract idea, naturally occurring article/phenomenon) since it fails to produce a useful, concrete and tangible result.

Specifically, the claimed subject matter does not produce a tangible result because the claimed subject matter fails to produce a result that is limited to having real world value rather than a result that may be interpreted to be abstract in nature as, for example, a thought, a computation, or manipulated data. More specifically, the claimed subject matter provides for:

(in claim 11) *"for each of a plurality of cells in a first two-dimensional grid, a first data field storing weather information corresponding to an area of predetermined size in a simulated*

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*geographical environment of the computer game, said each first data field comprising a plurality of sub-data fields, each sub-field defining a weather layer."*

**2.2.2** This produced result of storing data remains in the abstract and, thus, fails to achieve the required status of having real world value, because a practical application with a tangible result is not generated for application in a real world environment, nor is it conveyed to a real world environment via display to a user or storage in a computer. The Examiner respectfully notes that independent claims 1 and 21 each include limitations directed to *"graphically depicting weather in the computer game based on a current position of the user within the grid."* The Examiner contends that the *"first data field storing weather information corresponding to an area of predetermined size in a simulated geographical environment of the computer game"* in claim 11, is directed to the interim step [see step b) in claim 1] for applying the weather information read **from** (emphasis added) the data structure, and not to the tangibly practical result of graphically depicting weather as claimed in the other independent claims.

**2.3** Claims 1-21 are determined to not meet the criteria for a statutory process due to the inclusion of a description of a "communication media that embodies computer readable instructions, data structures, program modules or other data in a modulated data signal such as a carrier wave or other transport mechanism" [specification, p. 8, sec. 047]. In view of the guidelines for 101 subject matter, the instructions for graphically depicting weather of claims 1-21 do not manipulate appropriate subject matter, and thus cannot constitute a statutory process under 35 U.S.C. § 101.

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***Allowed Claims***

3. Claims 1-21 are deemed allowable over the prior art of record at this time, pending resolution of any rejections noted above, because the prior art does not specifically disclose the claimed method of graphically depicting weather defined in a pre-existing weather profile to a simulated geographical environment in a computer game.

***Response Guidelines***

4. A shortened statutory period for response to this action is set to expire **3 (three) months and 0 (zero) days** from the date of this letter. Failure to respond within the period for response will cause the application to become abandoned (see MPEP 710.02, 710.02(b)).

**4.1 Any response to the Examiner in regard to this non-final action should be**

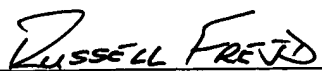
**directed to:** Russell Frejd, telephone number (571) 272-3779, Monday-Friday from 0530 to 1400 ET, or the examiner's supervisor, Kamini Shah, telephone number (571) 272-2279. Inquires of a general nature or relating to the status of this application should be directed to the TC2100 Group Receptionist (571) 272-2100.

**mailed to:** Commissioner of Patents and Trademarks  
P.O. Box 1450, Alexandria, VA 22313-1450

**or faxed to:** (571) 273-8300

Hand-delivered responses should be brought to the Customer Service Window, Randolph Building, 401 Dulany Street, Alexandria, VA, 22314.

**Date:** 3-February-2007

  
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**RUSSELL FREJD  
PRIMARY EXAMINER**